

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
KHAWAR MAQSOOD,

Plaintiff,

-against-

MICHAEL J. ASTRUE  
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

-----X  
DEBORAH A. BATTIS, United States District Judge.

07 Civ. 3002 (DAB)  
ORDER

Jan 28, 2008

On January 24, 2008, United States Magistrate Judge Douglas Eaton brought to the Court's attention a letter filed by the Government in this matter. The letter, sent on January 23, 2008, repeats the point made in the Government's November 26, 2007 Motion - that the Federal Courts lack jurisdiction over this matter because Plaintiff sued in this Court before he received "a final decision of the Commissioner," which is a jurisdictional requirement set forth in the Social Security Act at 42 U.S.C. § 405(g). The letter notes that this crucial point has not been rebutted by Plaintiff, even though he filed an opposing affidavit on December 10, 2007, and a sur-reply affirmation on January 6, 2008.

Indeed, after the decision by John W. Noonan, Administrative Law Judge, Plaintiff made a timely request for reconsideration regarding the dollar amount of his benefits but he prematurely ousted the Administrative Law Judge jurisdictionally by filing this federal law suit. This Court lacks jurisdiction because there has not been any "decision of the Commissioner." Accordingly, the Government's November 26, 2007 Motion to Dismiss is hereby GRANTED and the case is

REMANDED to the Administrative Law Judge. If it turns out that Plaintiff is dissatisfied with the Administrative Law Judge's ruling on the request for reconsideration, the Plaintiff must file a timely request for review by the Appeals Council. If it turns out that Plaintiff is dissatisfied with the Appeals Council's ruling, then he will have a "final decision of the Commissioner" and then he may file a new lawsuit.

SO ORDERED.

Dated: New York, New York

January 28, 2008

Deborah A. Batts

Deborah A. Batts  
United States District Judge